

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 156/PAT/2023
Assessment Year: 2017-2018**

***Prem Kumar Goutam,..... Appellant
C/o. Ramakant Prasad Singh,
P.O. Katehar, Surajgarha, Lakhisarai,
Bihar-811106
[PAN:AWTPG1304L]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Delhi,
National Faceless Assessment Centre, Delhi***

Appearances by:

*Shri Samit Kumar, Advocate, appeared on behalf of the
assessee*

*Shri Rupesh Agrawal, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

Date of concluding the hearing : August 24, 2023

Date of pronouncing the order : October 12, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax

(Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 24.03.2023 passed for Assessment Year 2017-18.

2. The assessee has taken seven grounds of appeal, which are not in consonance of Rule 8 of Income Tax Appellate Tribunal Rules, rather argumentative in nature. In brief, the dispute is whether assessee deserves to be visited with penalty under section 270A of the Income Tax Act or not.

3. Brief facts of the case are that the assessee was a brick kiln dealer and composition dealer under the provisions of Bihar Value Added Tax Act, 2005. He has filed his return under section 139(4) on 29.03.2018 under section 44AD of the Income Tax Act. The assessee has disclosed gross receipts of Rs.49,45,000/- and offered an income @ 8% amounting to Rs.3,95,600/-. He claimed deduction under section 80C of Rs.25,120/- and shown total income at Rs.3,70,480/-. The case of the assessee was selected for scrutiny assessment. The ld. Assessing Officer has issued notice under section 143(2) and thereafter completed the assessment under section 144 read with section 143(3) on 24.12.2019. The ld. Assessing Officer has made two additions under section 69C of the Income Tax Act. These additions are that the assessee has made a payment of Rs.76,000/- to the Mining Department, Rs.25,000/- as VAT and Rs.2,500/-

as professional tax. The assessee failed to explain the sources of such payment and accordingly he made an addition of Rs.1,03,500/-. The ld. Assessing Officer was of the view that these amounts were incurred by the assessee out of unexplained income. Hence these are to be disallowed under section 69C. He charged the taxes @ 60% under section 115BBE. Thereafter ld. Assessing Officer has observed that interest be charged and penalty proceeding under section 270A has also been initiated.

4. The assessee appeared in response to the penalty notice. He was advised to pay taxes and the interest in order to immunisation from penalty. The assessee paid the taxes along with interest and filled the form for immunisation, however, no immunity was granted and penalty was levied under section 270A for under reporting the income, which is in consequence of misreporting thereof.

5. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

6. With the assistance of ld. Representatives, we have gone through the record carefully. The assessee has offered income under section 44AD @ 8% of the gross receipts calculated by him at Rs.49,45,000/-. This figure was not disputed by the ld. Assessing Officer and in the

computation of income, he has adopted the figure of return claimed by the assessee at Rs.3,70,480/-. Though determination of taxable income is not in dispute in the present penalty proceeding. The dispute is, whether benefit of any inherent jurisdictional lacuna committed by the ld. Assessing Officer could again be availed by the assessee for absolving himself from levy of penalty under section 270A of the Income Tax Act. A perusal of section 44AD would indicate that in the case of certain category of assessee, a mechanism has been provided whereby they are required to offer income at a fixed rate i.e. 8% of the gross receipts and their gross receipt should not exceed Rs.50 lakhs. In the present case, the ld. Assessing Officer nowhere disputed that assessee does not fall in the category provided under section 44AD. He has accepted that part of computation of income but additionally he disallowed it. In case, an income is offered @ 8% of the gross receipt under section 44AD and the ld. Assessing Officer did not record a finding that this benefit u/s 44AD is not available to the assessee, then, he cannot direct the assessee to produce Profit & Loss Account and show the sources of the expenditure. The estimated rate of 8% in itself takes care of all expenses incurred by an assessee. No further inquiry is required to be made. There was an incorrect approach adopted by the ld. Assessing Officer while passing the assessment order. It is a different matter the assessee

did not dispute the determination of income otherwise addition would have been deleted. But the penalty proceeding is an independent proceeding. The assessee can take all jurisdictional plea to absolve him from levy of penalty.

7. In view of the above, the assessee cannot be charged that he has under-reported the income and liable to be visited for penalty under section 270A of the Income Tax Act. In view of the above, we allow the appeal of the assessee and delete the penalty.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 12.10.2023.

Sd/-

**(Rajesh Kumar)
Accountant Member**

Sd/-

**(Rajpal Yadav)
Vice-President**

Kolkata, the 12th day of October, 2023

*Copies to :(1) Prem Kumar Goutam,
C/o. Ramakant Prasad Singh,
P.O. Katehar, Surajgarha, Lakhisarai,
Bihar-811106*

*(2) Deputy Commissioner of Income Tax,
Delhi,
National Faceless Assessment Centre, Delhi*

- (3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre, Delhi;*
- (4) *Commissioner of Income Tax- ,*
- (5) *The Departmental Representative*
- (6) *Guard File*

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.